IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

MFA.No. 947 of 2001()

OP(MV).490/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM . DT.26.2.2001.

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APPELLANT: PETITIONER IN THE OP.(MV) NO.490/98.

UNNIKRISHNAN, S/O.KUTTYKRISHNAN,
LEKSHMI HOUSE, THOTTAKARA
AMSOM AND DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.P.G.PARAMESWARA PANICKER
SRI.SANTHEEP ANKARATH

RESPONDENTS: RESPONDENTS IN OP. mV. NO.490/98
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1. **RAMANARAYANAN, S/O.APPUKUTTY, KALARIKKAL HOUSE KINASSERY, PALAKKAD, (DRIVER OF KRR. 3247 CAR.)**

2. **T.VIKAYAKUMAR, (FATHER'S NAME NOT KNOWN) SREECHITHRA SEKHARIPURAM, PALAKKAD (OWNER OF KRR 3247 CAR).**

3. **NATIONAL INSURANCE CO. LTD., BRANCH OFFICE, PALAKKAD (POLICY NO.502300 IC /31/96/02107.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA) - R3
GOVERNMENT PLEADER
SRI.ALEXY AUGUSTINE
SRI.N.NAGARESH - R1 & R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, ALONG WITH MFA NO. 948 OF 2001 MFA NO.1339 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. Nos. 947, 948 and 1339 of 2001

Dated this the 5th day of July, 2007

Judgment

Koshy, J.

These appeals are filed by the same appellant against the common award passed by the Motor Accidents Claims Tribunal, Ottappalam in O.P.(M.V.) No.488, 489 and 490 of 1998. The appellant was driving an ambassador car bearing registration No.KLA 4566 with his wife from Coimbatore to Ottappalam through the national highway. At that time, it collided with another car bearing registration No.KRR 3247 which came from the opposite direction as a result of which the appellant as well as his wife suffered injuries. The car also suffered damages. O.P. (M.V.) No.488 of 1998 was filed by his wife claiming compensation for the injuries suffered. The tribunal awarded Rs.60,202/= with interest and cost and directed the insurer of the ambassador car to pay the compensation as the driver of the ambassador car KLA 4566 owned and driven by her own husband, appellant, was negligent. O.P.(M.V.) No.489 of 1998 was filed by the appellant for compensation for the injuries sustained by

him and O.P. (M.V.) No.490 of 1998 was filed by the appellant for compensation for damages caused to his motor car. Those claims were filed contending that driver of the car KRR 3247 was responsible for the accident. The tribunal found that the appellant was negligent and, therefore, no compensation was awarded for the personal injuries sustained by him and damages happened to his car. Finding of negligence on his part in all the three cases are questioned in these appeals.

2. No occurrence witness was examined in this case. If appellant was not negligent and first respondent who was driving the car KRR 3247 was negligent, appellant could have given evidence before the court. Further, when the written statements filed by the respondents alleging negligence on the part of the appellant, the appellant was the first class eye witness who was injured in the accident, but, he refused to go to the box and gave evidence to show that he was not negligent. When application for compensation is filed under section 166 of the motor Vehicles Act claiming compensation alleging that the accident occurred due to the negligence of the driver of a vehicle driven by

another person, it is the bounden duty of the appellant to prove the same, but, no evidence was adduced to show that first respondent driver of car KRR 3247 was negligent. Apart from the above, police, after preliminary investigation, charge-sheeted the appellant and no charge sheet was filed against the first respondent despite the fact that the appellant and his wife were injured in the accident. That shows that after preliminary investigation, police authorities came to the conclusion that the appellant was guilty. It is, of course, true that appellant was acquitted in the criminal case by Ext.A22 judgment. The witnesses examined included appellant's wife and they deposed before the criminal court that they do not know what was the reason for the occurrence and who was the driver of the car at the time of occurrence. Since prosecution has failed to prove the incident with conclusive evidence, appellant was acquitted, but, that will not help the appellant. He has not adduced any evidence before the tribunal to show that he is entitled to compensation from the respondents as the accident occurred due to the negligence of first respondent.

3. Tribunal also considered Ext.A2 scene mahazar and Ext.A3 copy of M.V.I. report. Ext.A2 scene mahazar shows that the road at the place of accident lies in east-west direction with a width of 7 metres for the tarred portion and road margin of 2 metres width on the southern side and 1.5 metres width on the northern side. The point of collision is noted as 4 metres towards the north from the southern fringe of tarred road. The vehicle driven by the appellant Unnikrishnan, that is, KLA 4566 proceeded from east to west whereas the motor car driven by first respondent (K.R.R. 3247) came from west to east. After collision due to impact, the car driven by the first respondent was thrown down to a low lying paddy field on the northern side of the road having a depth of about 10 metres from the road level completely dismantling its front bumper and other parts of the car whereas the car driven by the appellant received a hit on the left front side and it was pushed to the extreme northern mud margin. Ext.A3 is the M.V.I. report of motor car No. K.R.R. 3247. It did not have any mechanical defect. Ext.A17 is the M.V.I. report of motor car No. KLA 4566. It received a hit on the left front

side causing damages on the left front side. The scene mahazar and M.V.I. report would show that the accident occurred only due to the negligence of the appellant and he was driving the vehicle in a hectic speed while overtaking and he might have been overtaking some car. The tribunal observed as follows:

> "15. The road at the place of accident lies in east-west direction providing direct vision towards east and west for a considerable distance. It provided convenient width of 7 metres for the tarred portion with average road margins on either side. The motor car driven by the petitioner Unnikrishnan (R4 in OP 488/98) proceeded from east to west whereas the motor car driven by R1 came from west to east. The proper side of petitioner Unnikrishnan was the southern half whereas the point of collision is 4 metres towards north from the southern fringe of tarred road pointing out the fact that the car driven by Unnikrishnan overstepped the mid-line and crossed over to the wrong side."

The scene mahazar would show that not only he gestured to cross the mid-line, but, he went near to the accident place even though he was expected to drive through southern side and it would show that he was overtaking

some other vehicle and he was completely on the wrong wide. That is why left side of his car was damaged. On these facts, tribunal also held as follows:

> "Since the vehicle driven by Unnikrishnan went over to the wrong side, while venturing to overtake another vehicle going ahead, R1 was left with no other course but to face the collision and to drove down the car to the northern low lying paddy field in an effort to avoid collision. The fact that Unnikrishnan's car received hit on the left front side is no significance to infer that petitioner was not guilty of negligence. In fact, the hit took place which the car driven by Unnikrishnan overstepped the mid-line and went over to the wrong side while overtaking another vehicle."

4. We agree with the tribunal that evidence in this case point out that the accident occurred due to the negligence of the driver of the vehicle. In any event, appellant refused to go to the box to disprove the allegations against him and he failed to prove that the accident occurred due to the negligence of first respondent so as to entitle him to claim compensation from him or from his employer, owner of the vehicle or

from third respondent insurance company which insured the vehicle. In the above circumstances, since we are affirming the finding of negligence, all the three appeals filed by the appellant are liable to be dismissed. All the three appeals are dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.Nos.947, 948 & 1339/2001

JUDGMENT

Dated:5th July, 2007